

ESTTA Tracking number: **ESTTA720944**

Filing date: **01/15/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91221839
Party	Plaintiff Kind LLC
Correspondence Address	MARGARITA WALLACH MCARTER & ENGLISH LLP 245 PARK AVENUE, 27TH FLOOR NEW YORK, NY 10167 UNITED STATES mwallach@mccarter.com, apang@mccarter.com, dlynch@mccarter.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Margarita Wallach
Filer's e-mail	mwallach@mccarter.com, gfechter@mccarter.com, lshyavitz@mccarter.com, apang@mccarter.com, dlynch@mccarter.com
Signature	/Margarita Wallach/
Date	01/15/2016
Attachments	FINAL - Motion to Amend Notice of Opposition with Exhibit.pdf(1199932 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Filed: June 4, 2014

Published: January 6, 2015

Opposer,

Applicant.

Margarita Wallach  
Gary H. Fechter  
Lori J. Shyavitz  
Alice M. Pang  
Attorneys for Opposer  
KIND Management Inc.  
245 Park Ave, 27<sup>th</sup> Floor  
New York, NY 10167  
Tel: (212) 609-6800  
Fax: (212) 609-6921

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 86/300,597

Filed: June 4, 2014

For the mark: **KINDHUB**

Published: January 6, 2015

-----	:	OPPOSITION NO. 91221839
KIND MANAGEMENT INC.,	:	
	:	
Opposer,	:	
	:	
v.	:	
	:	
KINDHUB, LLC,	:	
	:	
Applicant.	:	
-----		

**MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION**

This matter concerns Kind Management Inc.'s ("Kind") opposition to Kindhub, LLC's ("Applicant") Application No. 86/300,597, for the mark KINDHUB, filed on an intent to use basis, June 4, 2014 and published January 6, 2015 ("Applicant's Mark").

**BACKGROUND**

Kind is the owner of the well-known trademark KIND and other KIND-formative marks, which are used in connection with a diverse array of goods and services, including snack foods, apparel, online retail store services, charitable services, blogs and bags, among others. Since at least as early as June 2004, Kind, through its predecessors in interest, has continuously used the trademark KIND in commerce.

On June 4, 2014, Applicant filed an application to register Applicant's Mark, pursuant to section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), in connection with "Dietary supplement drinks, namely, protein drinks" in Class 5, "A mobile software application providing a

marketplace for sellers and buyers of goods and services and providing information in the field of health, wellness, fitness, and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, conserving plants, animals, water, and energy” in Class 9, “Cook books” in Class 16, “Imitation leather bags and wallets” in Class 18, “Shirts, pants, headwear, footwear, and imitation leather gloves” in Class 25, “Milk; meat” in Class 29, “Fruit and vegetable juices containing nutritional supplements” in Class 32, “Online retail and wholesale store services featuring environmentally responsible and sustainable products and food products; operating an online marketplace for sellers and buyers of goods and services; promoting public awareness of nutrition and healthy food options, reducing human impact on the environment, using sustainable products and sustainable business solutions, and conserving plants, animals, water, and energy; business consulting in the field of environmental management, namely, advising businesses and individuals on issues of environmental impact, conservation, preservation, and protection, and economic analysis for business purposes in the nature of assisting companies to reduce impact on the environment and develop sustainable products, services, and business solutions,” in Class 35, “Online journals, namely, blogs in the field of health, wellness, fitness, and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, conserving plants, animals, water, and energy; arranging and conducting seminars in the field health, wellness, fitness, and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, and conserving plants, animals, water, and energy; educational and entertainment services, namely, providing programs in the field of health, wellness, fitness and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable

business solutions, and conserving plants, animals, water, and energy; providing information in the field of fitness; consulting services in the field of fitness” in Class 41, and “Providing information in the field of health, wellness, nutrition, and identifying healthy food options; consulting services in the field of health, wellness, and nutrition” in Class 44 (collectively, “Applicant’s Goods and Services”).

Kind’s Notice of Opposition (“Notice”) lists as its grounds for opposition: (1) priority and likelihood of confusion under section 2(d) of the Trademark Act of the 1946, as amended (the “Trademark Act”), 15 U.S.C. § 1052(d); (2) false suggestion of a connection under 15 U.S.C. § 2(a); and (3) dilution under section 43(c) of the Trademark Act, 15 U.S.C. § 1125(c) (together “Kind’s Grounds for Opposition”). *See* Notice at ¶¶ 18-29. The Notice identifies numerous registered KIND-formative trademarks and trademark applications owned by Kind that support Kind’s Grounds for Opposition. *See id.* at ¶ 6 and Exhibit A.

However, on August 14, 2015, Kind filed, pursuant to section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), additional relevant applications for KIND or KIND-formative trademarks, used in connection with relevant goods and services, which further support Kind’s Grounds for Opposition. These applications (collectively, the “New KIND Applications”) are:

- KIND (Serial No. 86/724,974) covering “Promoting the charitable giving of others, namely, tracking and publicizing charitable donations and random acts of kindness; Promotional services, namely, promoting the charities of others; Charitable services, namely, making monetary grants to individuals and groups who provide acts of kindness, services and activities for persons in need; Charitable services, namely, organizing and conducting volunteer programs and community service projects; Charitable services, namely, promoting public awareness and education of world hunger, human rights, environment, exploitation of women, children and men, homelessness, major health challenges, education, social justice and poverty; Charitable services, namely, organizing and developing programs and events that aim to improve and clean up the environment; Charitable services, namely, organizing and developing programs and events that aim to improve schools; Charitable services, namely, organizing and developing programs and events that aim to

improve the lives of senior citizens, women, children, active duty soldiers, veterans and persons in need; Charitable services, namely, providing clothing, school uniforms, shoes, food and drink, school supplies, books, text books, gifts, art kits, healing kits, care packages, diapers to senior citizens, women, children, active duty soldiers, veterans and persons in need; and Charitable services, namely, organizing and conducting a volunteer outreach program providing fresh flowers to people to inspire acts of kindness” in Class 35 and claiming a first use in commerce date of February 2011;

- KIND (Serial No. 86/724,964) covering “Online retail store services and mail order services featuring snack foods, snack-related gift sets and apparel” in Class 35 and claiming a first use in commerce date of March 29, 2005;
- KIND (Serial No. 86/724,943) covering “Providing a website featuring blogs and non-downloadable publications in the nature of articles in the field of charitable giving and service; and education services” in Class 41 and claiming a first use in commerce date of May 3, 2013; and
- KIND (Serial No. 86/702,578) covering “All-purpose carrying bags; carry-all bags; backpacks; reusable bags, tote bags and umbrellas” in Class 18 and claiming a first use in commerce date of April 2014.

Copies of the New KIND Applications and TSDR Status Reports are attached hereto as Exhibit A.

Like the KIND marks enumerated in the Notice, the New KIND Applications claim priority dates that are earlier than the filing date of Applicant’s intent-to-use application for KINDHUB and cover goods and services that are identical or closely related to Applicant’s Goods and Services. Due to the similarity of Applicant’s Mark to Kind’s marks and the similarity of Applicant’s Goods and Services identified in Application No. 86/300,597 to the goods and services covered by Kind’s marks, including the New KIND Applications, (1) consumers are likely to be confused as to the origin of Applicant’s Goods and Services bearing the Applicant’s Mark, thus causing injury to Kind, (2) Applicant’s Mark creates a false suggestion of a connection with Kind’s marks, including the marks in the New KIND Applications, (3) Applicant’s Mark will dilute Kind’s marks including the marks in the New KIND Applications. Kind thus respectfully requests that the Trademark Trial and Appeal Board

(the “Board”) grant Kind leave to file an Amended Notice of Opposition in the form of the Amended Notice of Opposition attached as Exhibit B<sup>1</sup> hereto (the “Amended Notice”) that references these relevant trademark applications.

### **ARGUMENT**

Amendments to pleadings in opposition proceedings are governed by Fed. R. Civ. P. 15. Fed. R. Civ. P. 15(a)(2) provides that leave to amend a party’s pleadings shall be freely given when justice so requires. Therefore, the Board, following the Federal Rules of Civil Procedure, liberally grants leave to amend pleadings, “unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party.” *Hurley Int’l L.L.C. v. Volta*, 82 U.S.P.Q.2d 1339, 1341 (TTAB 2007) (granting motion to amend due to sufficiency of claim and lack of prejudice).

Kind’s proposed amendment does not violate settled law and would not prejudice Applicant or the Board because Kind does not seek leave to add additional grounds for the Opposition. Rather, Kind seeks leave only to add the New KIND Applications to amplify the existing grounds for the Opposition, which have already been determined to be legally sufficient. *See Grupo Marti, S.A. Grupo Marti, S.A. v. Marti’s S.A.*, Cancellation No. 9204460, 2008 WL 9718104, at \*2 (TTAB Jan. 31, 2008) (petitioner granted leave to amend notice to add new applications supporting existing grounds for cancellation); *Avedis Zildjian Co. v. D. H. Baldwin Co.*, 180 U.S.P.Q. 539, 541 (TTAB 1973) (motion granted to amplify grounds in amendment to opposition notice).

The New KIND Applications add further support to Kind’s existing claims of priority and likelihood of confusion because they demonstrate first use dates that are earlier than the

---

<sup>1</sup> For the Board’s convenience, Opposer also includes a red-lined copy of the proposed Amended Notice of Opposition as contained in Exhibit B pursuant to TBMP at 507.01.

filing date of Applicant's intent-to-use application for KINDHUB, and cover goods and services that are identical or closely related to Applicant's Goods and Services and add further support to Kind's claims of a false suggestion of a connection and trademark dilution. The Board has previously recognized the importance of an opposer's recently acquired registrations and new applications in providing appropriate notice to an applicant of the specific grounds for opposition, and in establishing the priority of use. *See Huffy Corp. v. Geoffrey Inc.*, 18 U.S.P.Q.2d 1240, 1242 (Comm'r Pat. & Tr. 1990) (amendment granted to substitute new party and add new registration owned by that party as grounds supporting priority); *Cudahy Co.*, 206 U.S.P.Q. at 760 (opposer's priority established by registrations acquired after initiation of opposition and included in amendment to notice); *see also Kim Laube & Co., Inc. v. Loving Pets Corp.*, Opposition No. 91183002, 2010 WL 2783896, at \*3 (TTAB June 28, 2010) (noting that opposer should have moved to amend its notice to add applications filed after the opposition began, but considering them because applicant was sufficiently aware of them to address them in arguments); TBMP § 507.01 ("The primary purpose of pleadings, under the Federal Rules of Civil Procedure, is to give fair notice of the claims or defenses asserted.").

Kind's proposed amendment is additionally unlikely to cause prejudice because this opposition proceeding is in its infancy. *See, e.g., Carolina Exports Int'l, Inc. v. Bulgari, S.p.A.*, 108 F.3d 1394, 1997 WL 107736, at \*3 (Fed. Cir. 1997) *citing Flatley v. Trump*, 11 U.S.P.Q.2d 1284, 1286 (TTAB 1989) ("The question of prejudice is largely dependent upon the timing of the motion to amend"). For example, in *Carolina Exports Int'l, Inc. v. Bulgari, S.p.A.* and in *Flatley v. Trump*, the proceedings were in the pre-trial and discovery stages, and consequently, the Board found no prejudice and granted leave to amend. *See id.* Here, the Opposition has not proceeded beyond the exchange of initial disclosures which took place on January 11, 2016 pursuant to the



parties' consented to motion to extend which was granted on December 16, 2015. Thus, the parties have not yet exchanged discovery requests. There is no prejudice to Applicant because, thus far, the parties have focused their efforts on resolving this proceeding through settlement. In fact, discovery is not scheduled to close until June 9, 2016, leaving ample time to gather and evaluate relevant evidence. *See Flatley*, 11 U.S.P.Q.2d 1284, 1286 (TTAB 1989) ("Inasmuch as these cases are still in the discovery stage, respondent would not be prejudiced by allowance of the proposed amendment.").

Indeed, the Board has granted motions to amend in proceedings that have progressed far beyond the posture here. *See, e.g., Space Base Inc. v. Stadis Corp.*, 17 U.S.P.Q.2d 1216, 1217 & n.1 (TTAB 1990) (motion granted during opposer's testimony period); *Marmark Ltd. v. Nutrexpa S.A.*, 12 U.S.P.Q.2d 1843, 1844 (TTAB 1989) (motion granted after parties had already exchanged interrogatories and requests for production of documents); *Cudahy Co. v. August Packing Co.*, 206 U.S.P.Q. 759 (TTAB 1979) (motion granted just prior to petitioner's testimony period).

Further, Kind's Motion for Leave should be granted because Kind has not filed the motion with delay, in bad faith, or with dilatory motives. *See Grupo Marti, S.A. Grupo Marti, S.A.*, 2008 WL 9718104, at \*2 (granting motion to amend where there was no undue delay or bad faith in filing the motion); *Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1505 (TTAB 1993) (granting motion for leave to amend because it "cannot be considered to be dilatory or otherwise unduly delayed"). Kind filed the New KIND Applications on August 14, 2015, and the parties have been engaged in settlement discussions since at least that time. The Board has acknowledged that delay caused by settlement discussions is not undue and does

not create prejudice. *Reed Elsevier*, 2001 WL 1298839, at \*2 (granting leave to amend where “settlement discussions account for much delay in this case”).

In summary, prior to the exchange of discovery, Kind seeks to amend its notice of opposition to provide Applicant notice of its amplified grounds for opposition, namely its new applications filed after institution of the opposition, which have priority dates earlier than Applicant’s Mark and cover goods and services that are identical or closely related to Applicant’s Goods and Services. Kind’s motion does not violate any settled law, is unlikely to cause prejudice to Applicant or the Board, and is filed without undue delay and in good faith. Thus, Kind is entitled to amend its Notice to update its list of marks cited as the bases for opposition to include the New KIND Applications.

### **CONCLUSION**

For the foregoing reasons, Kind respectfully requests that the Board grant its Motion for Leave to Amend its Notice of Opposition and any other and additional relief to which Kind may be entitled.

Dated: January 15, 2016

Respectfully submitted,

McCARTER & ENGLISH, LLP

By: /Margarita Wallach/  
Margarita Wallach  
Gary H. Fechter  
Lori J. Shyavitz  
Alice M. Pang  
245 Park Ave, 27th Floor  
New York, NY 10167  
Tel: (212) 609-6800  
Fax: (212) 609-6921

*Attorneys for Opposer  
Kind Management Inc.*

**CERTIFICATION OF SERVICE**

The undersigned hereby certifies that a true and complete copy of the foregoing MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION and MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION has been served on counsel for Applicant by mailing said copy on January 15, 2016, via First Class Mail, postage prepaid to:

Joel D. Leviton  
Stinson Leonard Street LLP  
150 5<sup>th</sup> Street, Ste. 2300  
Minneapolis, Minnesota 55402

/Lori J. Shyavitz/  
Lori J. Shyavitz

---

# EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application  
Serial No. 86/300,597  
Filed: June 4, 2014  
For the mark: **KINDHUB**  
Published: January 6, 2015

KIND Management Inc.,	:	OPPOSITION NO. 91221839
	:	
Opposer,	:	
	:	
v.	:	
	:	
KINDHUB, LLC,	:	
	:	
Applicant.	:	

Commissioner for Trademarks  
United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**AMENDED NOTICE OF OPPOSITION**

KIND Management Inc. (“Kind” or “Opposer”), a Delaware corporation having its principal place of business at 1372 Broadway, New York, New York 10018, as successor in interest to KIND Inc. and KIND LLC, will be damaged by registration of the mark KINDHUB (“Applicant’s Mark”) shown in Application Serial No. 86/300,597, filed by KINDHUB, LLC, a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 2136 Ford Parkway, No. 133, St. Paul, Minnesota 55116 (“Applicant”) based on an intent-to-use basis in connection with “dietary supplements drinks, namely, protein drinks” in International Class 5; “a mobile software application providing a

marketplace for sellers and buyers of goods and services and providing information in the field of health, wellness, fitness, and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, conserving plants, animals, water, and energy” in International Class 9; “cook books” in International Class 16; “imitation leather bags and wallets” in International Class 18; “shirts, pants, headwear, footwear, and imitation leather gloves” in International Class 25; “milk, meat” in International Class 29; “fruit and vegetable juices containing nutritional supplements” in International Class 32; “online retail and wholesale store services featuring environmentally responsible and sustainable products and food products; operating an online marketplace for sellers and buyers of goods and services; promoting public awareness of nutrition and healthy food options, reducing human impact on the environment, using sustainable products and sustainable business solutions, and conserving plants, animals, water, and energy; business consulting in the field of environmental management, namely advising businesses and individuals on issues of environmental impact, conservation, preservation, and protection, and economic analysis for business purposes in the nature of assisting companies to reduce impact on the environment and develop sustainable products, services, and business solutions” in International Class 35; “online journals, namely, blogs in the field of health, wellness, fitness and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, conserving plants, animals, water, and energy; arranging and conducting seminars in the field of health, wellness, fitness and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions and conserving plants, animals, water, and energy; educational and entertainment services, namely, providing programs in the field of health, wellness, fitness and nutrition, reducing human impact

on the environment, using and developing sustainable products, services, and sustainable business solutions, and conserving plants, animals, water, and energy; providing information in the field of fitness; consulting services in the field of fitness” in International Class 41 and “providing information in the field of health, wellness, nutrition, and identifying healthy food options; consulting services in the field of health, wellness, and nutrition” in International Class 44 (“Applicant’s Goods and Services”). Opposer will be damaged by the registration of Applicant’s Mark and opposes the foregoing application (the “Application”) on the following grounds:

1. On December 31, 2014, KIND LLC assigned all right, title and interest in and to those certain trademarks, trademark registrations and goodwill appurtenant thereto (“KIND Marks”) as set forth below in paragraph 6, including without limitation, the right to take proceedings against third parties to protect and/or defend the said KIND Marks, to KIND Inc.

2. On January 1, 2015, Opposer acquired by assignment from KIND Inc. all right, title and interest in and to the KIND Marks as set forth below in paragraph 6, including without limitation, the right to take proceedings against third parties to protect and/or defend the said KIND Marks.

3. Opposer, through its predecessors-in-interest, commenced use of the trademark KIND in connection with snack food bars at least as early as June 14, 2004. Since that time, Opposer, through its predecessors-in-interest, has continuously used the trademark KIND in commerce.


4. Opposer is the owner of the well-known trademark KIND as used in connection with apparel as well as the well-known mark KIND and other “KIND” formative trademarks as used in connection with snack food bars and other snack foods.


5. Opposer owns the trademark registration for KIND in association with “clothing and apparel, namely, T-shirts, sweatshirts, caps, vests, jackets” in Class 25 which was first used by Opposer on May 31, 2011 and first used in commerce on September 26, 2011.

6. Opposer owns the following trademarks (collectively the “KIND Marks”) and applications and registrations on the Principal Register in the United States Patent and Trademark Office (“USPTO”):

<b>Mark</b>	<b>Registration / Serial No.</b>	<b>Filing Date / Registration Date</b>	<b>Goods</b>
KIND	2,984,772	June 14, 2004 / August 16, 2005	“Ready to eat, cereal derived food bars containing nuts” in Class 30
KIND	3,971,639	November 20, 2007 / May 31, 2011	“Nutrition bars, namely, processed fruit-and-nut-based food bars, nut based snack food bars” in Class 29
KIND	4,161,495	November 20, 2007 / June 19, 2012	“Clothing and apparel, namely, T-shirts, sweatshirts, caps, vests, jackets” in Class 25  “Sweet snacks, namely, fruit based snack food, dried fruit mixes; snack mixes consisting primarily of processed fruits and processed nuts; nutrition bars, namely, nut and seed based snack bars; fruit based snack food bars also



Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
			<p>containing grains, cereals, dried fruit, fruit juice; nut based snack food” in Class 29</p> <p>“Snacks, namely, cereal based snack food; cereal based snack food bars, granola based snack food bars, grain based snack food; Snack foods, namely, granola based mixes, rice based snack food, whole grain based snack food” in Class 30</p>
KIND	85/579,711	March 26, 2012	<p>“Non-alcoholic beverages, namely, fruit juices, vegetable juices, fruit and vegetable juices, flavored water, sport drinks; bottled, carbonated and non carbonated water; non-alcoholic beverage mixes, specifically, powders and drink crystals for making vitamin enriched beverages excluding mixes for teas and not for medicinal purposes” in Class 32</p>
	3,882,221	September 16, 2009 November 30, 2010	“Healthy snacks, namely, nut and seed

Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
			based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit” in Class 29
	4,097,493	April 24, 2009 February 14, 2012	“Nutrition bars, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit” in Class 29
KINDINGS	4,013,148	January 2, 2010 August 16, 2011	“Healthy snacks, namely, nut and seed based snack bars; processed fruit and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit” in Class 29
KINDTASTIC	4,053,499	August 31, 2009 November 8, 2011	“Healthy snacks, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and

Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
			dried fruit” in Class 29
KINDELICIOUS	4,049,775	August 31, 2009 November 1, 2011	“Healthy snacks, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit” in Class 29
KIND	86/724,974	August 14, 2015	“Promoting the charitable giving of others, namely, tracking and publicizing charitable donations and random acts of kindness; Promotional services, namely, promoting the charities of others; Charitable services, namely, making monetary grants to individuals and groups who provide acts of kindness, services and activities for persons in need; Charitable services, namely, organizing and conducting volunteer programs and community service projects; Charitable services, namely, promoting public awareness and education of world

Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
			<p>hunger, human rights, environment, exploitation of women, children and men, homelessness, major health challenges, education, social justice and poverty; Charitable services, namely, organizing and developing programs and events that aim to improve and clean up the environment; Charitable services, namely, organizing and developing programs and events that aim to improve schools; Charitable services, namely, organizing and developing programs and events that aim to improve the lives of senior citizens, women, children, active duty soldiers, veterans and persons in need; Charitable services, namely, providing clothing, school uniforms, shoes, food and drink, school supplies, books, text books, gifts, art kits, healing kits, care packages, diapers to senior citizens, women, children, active duty soldiers,</p>

<b>Mark</b>	<b>Registration / Serial No.</b>	<b>Filing Date / Registration Date</b>	<b>Goods</b>
			veterans and persons in need; and Charitable services, namely, organizing and conducting a volunteer outreach program providing fresh flowers to people to inspire acts of kindness” in Class 35
KIND	86/724,964	August 14, 2015	“Online retail store services and mail order services featuring snack foods, snack-related gift sets and apparel” in Class 35
KIND	86/724,943	August 14, 2015	“Providing a website featuring blogs and non-downloadable publications in the nature of articles in the field of charitable giving and service; and education services” in Class 41
KIND	86/702,578	Jul. 23, 2015	“All-purpose carrying bags; carry-all bags; backpacks; reusable bags, tote bags and umbrellas” in Class 18

Copies of the registration certificates printed from the USPTO website for the above referenced trademark registrations and the Trademark Status & Document Retrieval (TSDR) documents printed from the USPTO website for the above referenced trademark applications are attached as Exhibit A.

7. Opposer has never abandoned and has, through its predecessors-in-interest, continuously used the KIND Marks in connection with the foregoing goods.

8. The registrations referenced above are valid and subsisting, in full force and effect. Opposer's Registration No. 2,984,772 for the trademark KIND is incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and all of the registrations referenced above constitute conclusive evidence of Opposer's exclusive right to use the KIND Marks in commerce in connection with the goods specified in the registrations.

9. Since at least as early as March 29, 2005 Opposer has been continuously selling on-line snack bars under the trademark KIND and has continuously sold online since at least as early as 2011 apparel under the trademark KIND.

10. Since at least as early as February 2011, Opposer has continuously provided charitable services under the trademark KIND.

11. Since at least as early as May 3, 2013, Opposer has continuously provided a blog under the trademark KIND.

12. Since at least as early as April 2014, Opposer has been continuously using the mark KIND in connection with bags, including reusable bags, backpacks and umbrellas.

13. Opposer is the owner of the trade name KIND which it, through its predecessors-in-interest, has continuously used since a date prior to any date of priority that may be asserted by Applicant.

14. During its longstanding, widespread and continuous use of the KIND Marks and the trade name KIND, Opposer has expended considerable time, effort and financial resources in advertising and publicizing the sale of the goods bearing the KIND Marks and sold under the trade name KIND. The KIND Marks and the KIND trade name are symbolic of the extensive

goodwill and consumer recognition that Opposer has established through substantial and extensive expenditures of time, effort and other resources in connection with promotion and advertising of the goods Opposer offers and sells under the KIND Marks and the KIND trade name. As a result of the foregoing and the high quality of Opposer's apparel and snack products the public and the trade have come to recognize the products offered in conjunction with the KIND Marks and the trade name KIND as signifying Opposer and its apparel and snack foods.

15. Upon information and belief, Applicant is a limited liability company organized and existing under the laws of the State of Delaware with a principal place of business located at 2136 Ford Parkway, No. 133, St. Paul, Minnesota 55116.

16. On June 4, 2014 Applicant filed the Application based on an intent-to-use for the trademark KINDHUB in commerce in connection with Applicant's Goods and Services. Accordingly, the KIND Marks cited above, and the trade name KIND, have priority of use and/or registration to Applicant's use of and application for Applicant's Mark.

17. The Application was published for opposition on January 6, 2015. An extension of the deadline for opposing the Application was timely filed. The current deadline to oppose the Application is May 6, 2015.

18. The trademark proposed for registration by the Applicant, namely, KINDHUB, is identical to and/or confusingly similar to the KIND Marks and Opposer's trade name KIND, and is applied to goods and services that are identical and/or closely related to the goods and services offered and sold by Opposer under the KIND Marks and the KIND trade name. Applicant's Mark also deceptively points to the Opposer. Applicant's Mark so closely resembles Opposer's KIND Marks and KIND trade name as to be likely to be confused therewith and mistaken therefor. Applicant's Mark is deceptively similar to Opposer's KIND Marks and KIND trade

name so as to cause confusion and lead to deception as to the origin of Applicant's Goods and Services bearing the Applicant's Mark.

19. Upon information and belief, Applicant's Goods and Services bearing Applicant's Mark will be promoted and sold or offered for sale through the same distribution channels and to the same classes of consumers as those of Opposer.

20. If Applicant is permitted to use and register its trademark KINDHUB for Applicant's Goods and Services as specified in its Application, there will be confusion in the trade. As a result, the Opposer will be injured and damaged by reason of the similarity between the Applicant's mark KINDHUB and Opposer's KIND Marks and KIND trade name. Consumers will associate Applicant's Goods and Services with those of the Opposer, and mistakenly believe that such goods and services are provided, endorsed by, or otherwise affiliated with the Opposer.

### **COUNT ONE**

#### **Likelihood of Confusion**

21. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 20.

22. Based on the similarities between Opposer's KIND Marks and KIND trade name and Applicant's Mark, and the similarity and related nature of the goods and services of the respective parties, Applicant's Mark so resembles Opposer's KIND Marks and KIND trade name, which were previously and continuously used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive consumers, with consequent injury to Opposer and to the public in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).



23. The public is likely to falsely associate Applicant's Goods and Services under the KINDHUB mark with Opposer or with Opposer's goods and services, falsely believe that Applicant's Goods and Services emanate from or are sponsored, endorsed or licensed by Opposer, or falsely believe that there is some relationship between Applicant and Opposer.

24. The granting of a trademark registration for the trademark KINDHUB to Applicant would be contrary to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and would violate or diminish the prior and superior rights of Opposer in its KIND Marks and KIND trade name.

25. Applicant's Application and the presumption of exclusivity that would arise from a registration to Applicant of the trademark KINDHUB are inconsistent with Opposer's prior rights in the KIND Marks and KIND trade name and the rights flowing from Opposer's federal trademark registrations for the KIND Marks.

26. Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of the Applicant's Mark and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

## **COUNT TWO**

### **Falsely Suggests a Connection with Opposer**

27. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 26.

28. Opposer will be damaged by registration of Applicant's Mark under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that Applicant's use and registration of the subject mark will falsely suggest a connection between Applicant and Opposer to the damage of

Opposer and injury to the public, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. 1052(a).

### **COUNT THREE**

#### **Dilution**

29. Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through 28.

30. In view of the strength of Opposer's KIND Marks, the duration and extent of Opposer's use and advertising of its KIND Marks, the nationwide use of Opposer's KIND Marks, and the degree of recognition of Opposer's KIND Marks, Opposer's KIND Marks have become famous. Opposer's KIND Marks were famous prior to the filing date of the Application for Applicant's Mark.

31. Applicant's Mark is likely to cause, and will cause, dilution of the distinctive value of Opposer's KIND Marks under Section 43(c) of the Lanham Act of 1946, as amended, 15 U.S.C. § 1125(c).

32. Opposer will be damaged if Applicant's Mark is granted registration because Applicant will obtain statutory rights in the designation KINDHUB in violation and derogation of the established prior rights of Opposer.

WHEREFORE, Opposer respectfully requests that said Application Serial No. 86/300,597 be rejected, that no registration be issued thereon to Applicant, that this Opposition be sustained in favor of Opposer and that the Trademark Trial and Appeal Board grant such other and further relief as it deems just and appropriate.

Payment has been provided in the requisite amount to cover the statutory filing fee for filing a Notice of Opposition. All communications should be addressed to Opposer's counsel, McCarter & English at the address stated below.

Dated: January 15, 2016

Respectfully submitted,

McCarter & English, LLP

By: /Margarita Wallach/  
Margarita Wallach  
Gary H. Fechter  
Lori J. Shyavitz  
Alice M. Pang  
Attorneys for Opposer  
KIND Management Inc.  
245 Park Ave, 27<sup>th</sup> Floor  
New York, NY 10167  
Tel: (212) 609-6800  
Fax: (212) 609-6921

CERTIFICATION OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing AMENDED NOTICE OF OPPOSITION has been served on counsel for Applicant by mailing said copy on January 15, 2016, via First Class Mail, postage prepaid to:

Joel D. Leviton  
Stinson Leonard Street LLP  
150 5<sup>th</sup> Street, Ste. 2300  
Minneapolis, Minnesota 55402

/Lori J. Shyavitz/  
Lori J. Shyavitz

# EXHIBIT A

Int. Cl.: 30

Prior U.S. Cl.: 46

**United States Patent and Trademark Office**

**Reg. No. 2,984,772**

Registered Aug. 16, 2005

**TRADEMARK  
PRINCIPAL REGISTER**

**KIND**

PEACEWORKS (DELAWARE CORPORATION)  
444 PARK AVENUE SOUTH  
NEW YORK, NY 10016

THE MARK CONSISTS OF STANDARD CHAR-  
ACTERS WITHOUT CLAIM TO ANY PARTICULAR  
FONT, STYLE, SIZE, OR COLOR.

FOR: READY TO EAT, CEREAL DERIVED FOOD  
BARS CONTAINING NUTS, IN CLASS 30 (U.S. CL.  
46).

SER. NO. 76-596,770, FILED 6-14-2004.

FIRST USE 2-18-2003; IN COMMERCE 2-18-2003.

CURTIS FRENCH, EXAMINING ATTORNEY

# United States of America

United States Patent and Trademark Office

KIND

**Reg. No. 3,971,639**

**Registered May 31, 2011**

**Int. Cl.: 29**

**TRADEMARK**

**PRINCIPAL REGISTER**

KIND, LLC (DELAWARE LIMITED LIABILITY COMPANY)

P.O. BOX 1393

OLD CHELSEA STATION, NY 10113

FOR: NUTRITION BARS, NAMELY, PROCESSED FRUIT-AND-NUT-BASED FOOD BARS,  
NUT BASED SNACK FOOD BARS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 2-18-2003; IN COMMERCE 2-18-2003.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,984,772.

SN 77-981,723, FILED 11-20-2007.

HOWARD SMIGA, EXAMINING ATTORNEY



*David J. Kyros*

Director of the United States Patent and Trademark Office

# United States of America

United States Patent and Trademark Office

# KIND

**Reg. No. 4,161,495**

**Registered June 19, 2012**

**Int. Cls.: 25, 29, and 30**

KIND LLC (DELAWARE LIMITED LIABILITY COMPANY)  
P.O. BOX 705 MIDTOWN STATION  
NEW YORK, NY 10018

FOR: CLOTHING AND APPAREL, NAMELY, T-SHIRTS, SWEATSHIRTS, CAPS, VESTS, JACKETS, IN CLASS 25 (U.S. CLS. 22 AND 39).

**TRADEMARK**

FIRST USE 5-31-2011; IN COMMERCE 9-26-2011.

**PRINCIPAL REGISTER**

FOR: SWEET SNACKS, NAMELY, FRUIT BASED SNACK FOOD, DRIED FRUIT MIXES; SNACK MIXES CONSISTING PRIMARILY OF PROCESSED FRUITS AND PROCESSED NUTS; NUTRITION BARS, NAMELY, NUT AND SEED BASED SNACK BARS; FRUIT BASED SNACK FOOD BARS ALSO CONTAINING GRAINS, CEREALS, DRIED FRUIT, FRUIT JUICE; NUT BASED SNACK FOOD, IN CLASS 29 (U.S. CL. 46).

FIRST USE 2-18-2003; IN COMMERCE 2-18-2003.

FOR: SNACKS, NAMELY, CEREAL BASED SNACK FOOD; CEREAL BASED SNACK FOOD BARS, GRANOLA BASED SNACK FOOD BARS, GRAIN BASED SNACK FOOD; SNACK FOODS, NAMELY, GRANOLA BASED MIXES, RICE BASED SNACK FOOD, WHOLE GRAIN BASED SNACK FOOD, IN CLASS 30 (U.S. CL. 46).

FIRST USE 6-8-2011; IN COMMERCE 6-8-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,984,772.

SN 77-333,800, FILED 11-20-2007.

HOWARD SMIGA, EXAMINING ATTORNEY



*David S. Kypas*

Director of the United States Patent and Trademark Office



Generated on: This page was generated by TSDR on 2015-05-06 19:56:03 EDT

Mark: KIND

KIND

US Serial Number: 85579711

Application Filing Date: Mar. 26, 2012

Register: Principal

Mark Type: Trademark

Status: A third request for extension of time to file a Statement of Use has been granted.

Status Date: Dec. 10, 2014

Publication Date: Apr. 09, 2013

Notice of Allowance Date: Jun. 04, 2013

## Mark Information

Mark Literal Elements: KIND

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

## Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*...\* identify additional (new) wording in the goods/services.

For: Non-alcoholic beverages, namely, fruit juices, vegetable juices, fruit and vegetable juices, flavored water, sport drinks; bottled, carbonated and non carbonated water; non-alcoholic beverage mixes, specifically, powders and drink crystals for making vitamin enriched beverages excluding mixes for teas and not for medicinal purposes

International Class(es): 032 - Primary Class

U.S Class(es): 045, 046, 048

Class Status: ACTIVE

Basis: 1(b)

## Basis Information (Case Level)

Filed Use: No	Currently Use: No	Amended Use: No
Filed ITU: Yes	Currently ITU: Yes	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

## Current Owner(s) Information

Owner Name: Kind LLC

Owner Address: P.O. Box 705 Midtown Station  
New York, NEW YORK 10018  
UNITED STATES

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where Organized: DELAWARE

## Attorney/Correspondence Information

Attorney of Record

Attorney Name: Margarita Wallach, Esq.

Attorney Primary Email Address: [mwallach@mccarter.com](mailto:mwallach@mccarter.com)

Attorney Email Yes  
Authorized:

Correspondent

Correspondent Name/Address: Margarita Wallach, Esq.  
McCarter & English, LLP  
245 Park Avenue, 27th Floor  
New York, NEW YORK 10167  
UNITED STATES

Phone: (212) 609-6800

Fax: (212) 609-6921

Correspondent e-mail: [mwallach@mccarter.com](mailto:mwallach@mccarter.com) [dlynch@mccarter.com](mailto:dlynch@mccarter.com)

Correspondent e-mail Yes  
Authorized:

Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Dec. 11, 2014	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Dec. 10, 2014	EXTENSION 3 GRANTED	69302
Dec. 02, 2014	EXTENSION 3 FILED	69302
Dec. 02, 2014	TEAS EXTENSION RECEIVED	
Jun. 17, 2014	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Jun. 16, 2014	EXTENSION 2 GRANTED	69302
May 29, 2014	EXTENSION 2 FILED	69302
Jun. 16, 2014	CASE ASSIGNED TO INTENT TO USE PARALEGAL	69302
May 29, 2014	TEAS EXTENSION RECEIVED	
Jan. 15, 2014	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Nov. 28, 2013	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Nov. 26, 2013	EXTENSION 1 GRANTED	98765
Nov. 26, 2013	EXTENSION 1 FILED	98765
Nov. 26, 2013	TEAS EXTENSION RECEIVED	
Oct. 25, 2013	ATTORNEY REVOKED AND/OR APPOINTED	
Oct. 25, 2013	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jun. 04, 2013	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Apr. 09, 2013	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Apr. 09, 2013	PUBLISHED FOR OPPOSITION	
Mar. 20, 2013	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Mar. 07, 2013	LAW OFFICE PUBLICATION REVIEW COMPLETED	68171
Mar. 06, 2013	ASSIGNED TO LIE	68171
Feb. 24, 2013	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 09, 2013	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jan. 09, 2013	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jan. 09, 2013	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Dec. 18, 2012	ATTORNEY REVOKED AND/OR APPOINTED	
Dec. 18, 2012	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jul. 09, 2012	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Jul. 09, 2012	NON-FINAL ACTION E-MAILED	6325
Jul. 09, 2012	NON-FINAL ACTION WRITTEN	69192
Jun. 30, 2012	ASSIGNED TO EXAMINER	69192
Apr. 02, 2012	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Mar. 29, 2012	NEW APPLICATION ENTERED IN TRAM	

## TM Staff and Location Information

TM Staff Information	
TM Attorney: SANTOMARTINO, MARTHA L	Law Office Assigned: LAW OFFICE 112
File Location	
Current Location: INTENT TO USE SECTION	Date in Location: Jun. 16, 2014

## Assignment Abstract Of Title Information

Summary

Total Assignments: 3

Applicant: Kind LLC

**Assignment 1 of 3**

Conveyance: SECURITY INTEREST

Reel/Frame: 4881/0331

Pages: 9

Date Recorded: Oct. 15, 2012

Supporting Documents: assignment-tm-4881-0331.pdf

**Assignor**

Name: KIND LLC

Execution Date: Oct. 15, 2012

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where  
Organized: DELAWARE

**Assignee**

Name: BANK OF MONTREAL, AS AGENT

Legal Entity Type: CHARTERED BANK

State or Country Where  
Organized: CANADA

Address: 115 SOUTH LASALLE STREET  
CHICAGO, ILLINOIS 60603

**Correspondent**

Correspondent Name: RICHARD KALWA

Correspondent Address: 111 WEST MONROE STREET  
CHAPMAN AND CUTLER LLP  
CHICAGO, IL 60603

Domestic Representative - Not Found

**Assignment 2 of 3**

Conveyance: RELEASE BY SECURED PARTY

Reel/Frame: 5178/0309

Pages: 7

Date Recorded: Dec. 19, 2013

Supporting Documents: assignment-tm-5178-0309.pdf

**Assignor**

Name: BANK OF MONTREAL

Execution Date: Dec. 19, 2013

Legal Entity Type: CHARTERED BANK

State or Country Where  
Organized: CANADA

**Assignee**

Name: KIND LLC

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where  
Organized: DELAWARE

Address: 8 WEST 38TH STREET, 6TH FLOOR  
NEW YORK, NEW YORK 10018

**Correspondent**

Correspondent Name: RICHARD KALWA

Correspondent Address: 111 WEST MONROE STREET  
CHAPMAN AND CUTLER LLP  
CHICAGO, IL 60603

Domestic Representative - Not Found

**Assignment 3 of 3**

Conveyance: TRADEMARK SECURITY AGREEMENT

Reel/Frame: 5181/0230

Pages: 8

Date Recorded: Dec. 19, 2013

Supporting Documents: assignment-tm-5181-0230.pdf

**Assignor**

Name: KIND LLC

Execution Date: Dec. 19, 2013

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country Where  
Organized: DELAWARE

**Assignee**

Name: BANK OF AMERICA, N.A., AS ADMINISTRATIVE AGENT

Legal Entity Type: NATIONAL BANKING ASSOCIATION

State or Country Where  
Organized: UNITED STATES

Address: 135 S. LASALLE STREET  
IL4-135-09-61  
CHICAGO, ILLINOIS 60603

**Correspondent**

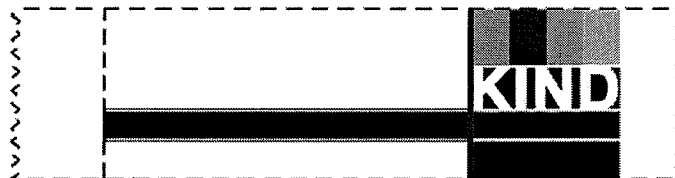
**Correspondent Name:** TERRY L. WITCHER, PARALEGAL

**Correspondent Address:** MCGUIREWOODS LLP  
P.O. BOX 31247  
CHARLOTTE, NC 28202

**Domestic Representative - Not Found**

# United States of America

United States Patent and Trademark Office



**Reg. No. 3,882,221**

KIND, LLC (DELAWARE LIMITED LIABILITY COMPANY)  
P.O. BOX 1393

**Registered Nov. 30, 2010**

OLD CHELSEA STATION, NY 10113

**Int. Cl.: 29**

FOR: HEALTHY SNACKS, NAMELY, NUT AND SEED BASED SNACK BARS; PROCESSED FRUIT-AND NUT-BASED FOOD BARS, NUT BASED SNACK FOOD BARS, FRUIT BASED SNACK FOOD BARS ALSO CONTAINING NUTS, GRAINS, CEREALS AND DRIED FRUIT, IN CLASS 29 (U.S. CL. 46).

**TRADEMARK**

**PRINCIPAL REGISTER**

FIRST USE 2-18-2003; IN COMMERCE 2-18-2003.

OWNER OF U.S. REG. NO. 2,984,772.

THE COLOR(S) YELLOW, RED, GREEN, BLUE, BLACK AND WHITE IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE MARK CONSISTS OF THE WORD "KIND" IN WHITE ON A HORIZONTAL BLACK BAR BENEATH A FOUR-COLOR PANEL CONSISTING OF THE COLORS YELLOW, RED, GREEN AND BLUE. UNDERNEATH THE BLACK BAR ARE TWO MORE BLACK BARS SEPARATED BY WHITE LINES. TO THE LEFT OF THE WORD "KIND" AND THE FOUR-COLOR PANEL IS A NARROW VERTICAL STRIPE IN RED. A BLACK STRIPE RUNS HORIZONTALLY ACROSS THE MIDDLE OF THE MARK AND EXTENDS TOWARDS THE RIGHT SIDE TO BECOME THE MIDDLE BLACK BAR BENEATH THE WORD "KIND". THE HORIZONTAL STRIPE IS DELINEATED BY WHITE LINES. AT THE LEFT EDGE OF THE LONG HORIZONTAL STRIPE IS A NARROW VERTICAL STRIPE IN BROKEN LINES TO SHOW PLACEMENT. THE LARGE WHITE AREAS ABOVE AND BELOW THE LONG HORIZONTAL STRIPE REPRESENT TRANSPARENT AREAS AND ARE NOT PART OF THE MARK, AND THE WHITE AREAS TO THE LEFT OF THE NARROW VERTICAL STRIPE AND TO THE RIGHT OF THE FOUR-COLOR PANEL REPRESENT TRANSPARENT AREAS OR BACKGROUND AND ARE NOT PART OF THE MARK. THE MATTER SHOWN BY THE BROKEN LINES DEPICTING THE OUTSIDE OF THE MARK AND THE NARROW VERTICAL STRIPE IS NOT A PART OF THE MARK AND SERVES ONLY TO INDICATE THE POSITION OF THE MARK ON THE GOODS.



SER. NO. 77-827,342, FILED 9-16-2009.

ROBIN MITTLER, EXAMINING ATTORNEY

*David J. Kypas*

Director of the United States Patent and Trademark Office

# United States of America

United States Patent and Trademark Office



**Reg. No. 4,097,493**

**Registered Feb. 14, 2012**

**Int. Cl.: 29**

**TRADEMARK**

**PRINCIPAL REGISTER**

PEACEWORKS HOLDINGS LLC (DELAWARE LIMITED LIABILITY COMPANY)  
PO BOX 1393 OLD CHELSEA STATION  
NEW YORK, NY 10113

FOR: NUTRITION BARS, NAMELY, NUT AND SEED BASED SNACK BARS; PROCESSED FRUIT-AND NUT-BASED FOOD BARS, NUT BASED SNACK FOOD BARS, FRUIT BASED SNACK FOOD BARS ALSO CONTAINING NUTS, GRAINS, CEREALS AND DRIED FRUIT, IN CLASS 29 (U.S. CL. 46).

FIRST USE 2-18-2003; IN COMMERCE 2-18-2003.

OWNER OF U.S. REG. NO. 2,984,772.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FRUIT + NUT" AND THE NONDISTINCTIVE PACKAGING CONFIGURATION, APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE PRODUCT PACKAGING TRADE DRESS FOR THE PRESENTATION OF READY TO EAT FOOD BARS AND THE TERMS "KIND FRUIT + NUT" ON THE PRODUCT PACKAGING. THE PACKAGING CONFIGURATION CONSISTS OF TWO LARGE TRANSPARENT PANELS OR WINDOWS THROUGH WHICH THE PRODUCT IS SEEN, THIS PANEL IS DIVIDED BY A NARROW BAND PLACED IN THE MIDDLE OF THE TRANSPARENT WINDOW. THE TERMS "FRUIT + NUT" APPEAR WITHIN THE BAND AND AT THE RIGHT HAND SIDE; AT EITHER END OF THE NARROW BAND IS A SOLID RECTANGULAR PANEL WHICH EXTENDS FROM THE TOP TO THE BOTTOM OF THE PACKAGING. THE WORD "KIND" APPEARS ON THE RIGHT OF THE PACKAGING ABOVE THE NARROW BAND AND THE WORDS "FRUIT + NUT". FOUR SMALLER VERTICAL RECTANGULAR BARS APPEAR ABOVE THE BOLD LETTERS "KIND". THE MATTER SHOWN IN BROKEN LINES IS NOT PART OF THE MARK AND SERVES ONLY TO SHOW THE POSITION OR PLACEMENT OF THE MARK.

SER. NO. 77-721,453, FILED 4-24-2009.

ELLEN PERKINS, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

**United States of America**  
United States Patent and Trademark Office

# KINDINGS

**Reg. No. 4,013,148**

**Registered Aug. 16, 2011**

**Int. Cl.: 29**

**TRADEMARK**

**PRINCIPAL REGISTER**

KIND, LLC (DELAWARE LIMITED LIABILITY COMPANY)  
OLD CHELSEA STATION  
P.O. BOX 1393  
NEW YORK, NY 10113

FOR: HEALTHY SNACKS, NAMELY, NUT AND SEED BASED SNACK BARS; PROCESSED FRUIT AND NUT-BASED FOOD BARS, NUT BASED SNACK FOOD BARS, FRUIT BASED SNACK FOOD BARS ALSO CONTAINING NUTS, GRAINS, CEREALS AND DRIED FRUIT, IN CLASS 29 (U.S. CL. 46).

FIRST USE 6-0-2009; IN COMMERCE 7-5-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 2,984,772.

SN 77-903,894, FILED 1-2-2010.

JAMES GRIFFIN, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

# United States of America

United States Patent and Trademark Office

## KINDTASTIC

**Reg. No. 4,053,499**

**Registered Nov. 8, 2011**

**Int. Cl.: 29**

**TRADEMARK**

**PRINCIPAL REGISTER**

KIND, LLC (DELAWARE LIMITED LIABILITY COMPANY)  
PO BOX 705 MIDTOWN STATION  
NEW YORK, NY 10018

FOR: HEALTHY SNACKS, NAMELY, NUT AND SEED BASED SNACK BARS; PROCESSED FRUIT-AND NUT-BASED FOOD BARS, NUT BASED SNACK FOOD BARS, FRUIT BASED SNACK FOOD BARS ALSO CONTAINING NUTS, GRAINS, CEREALS AND DRIED FRUIT, IN CLASS 29 (U.S. CL. 46).

FIRST USE 2-1-2010; IN COMMERCE 4-22-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,984,772 AND 3,504,106.

SN 77-816,084, FILED 8-31-2009.

KATHERINE CONNOLLY, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office



# United States of America

United States Patent and Trademark Office

## KINDELICIOUS

**Reg. No. 4,049,775**

**Registered Nov. 1, 2011**

**Int. Cl.: 29**

**TRADEMARK**

**PRINCIPAL REGISTER**

KIND, LLC (DELAWARE LIMITED LIABILITY COMPANY)  
PO BOX 705 MIDTOWN STATION  
NEW YORK, NY 10018

FOR: HEALTHY SNACKS, NAMELY, NUT AND SEED BASED SNACK BARS; PROCESSED FRUIT-AND NUT-BASED FOOD BARS, NUT BASED SNACK FOOD BARS, FRUIT BASED SNACK FOOD BARS ALSO CONTAINING NUTS, GRAINS, CEREALS AND DRIED FRUIT, IN CLASS 29 (U.S. CL. 46).

FIRST USE 2-1-2010; IN COMMERCE 4-27-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 2,984,772 AND 3,504,106.

SN 77-816,085, FILED 8-31-2009.

KATHERINE CONNOLLY, EXAMINING ATTORNEY



*David J. Kappas*

Director of the United States Patent and Trademark Office

Generated on:

This page was generated by TSDR on 2016-01-15 14:54:36 EST

Mark: KIND

KIND

US Serial Number: 86724974

Application Filing Date:

Aug. 14, 2015

Filed as TEAS RF: Yes

Currently TEAS RF:

Yes

Register:

Principal

Mark Type:

Service Mark

Status:

Review prior to publication completed.

Status Date:

Dec. 31, 2015

Publication Date: Feb. 02, 2016

## Mark Information

Mark Literal Elements:

KIND

Standard Character Claim:

Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type:

4 - STANDARD CHARACTER MARK

## Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "\*" identify additional (new) wording in the goods/services.

For:

Promoting the charitable giving of others, namely, tracking and publicizing charitable donations and random acts of kindness; Promotional services, namely, promoting the charities of others; Charitable services, namely, making monetary grants to individuals and groups who provide acts of kindness, services and activities for persons in need; Charitable services, namely, organizing and conducting volunteer programs and community service projects; Charitable services, namely, promoting public awareness and education of world hunger, human rights, environment, exploitation of women, children and men, homelessness, major health challenges, education, social justice and poverty; Charitable services, namely, organizing and developing programs and events that aim to improve and clean up the environment; Charitable services, namely, organizing and developing programs and events that aim to improve schools; Charitable services, namely, organizing and developing programs and events that aim to improve the lives of senior citizens, women, children, active duty soldiers, veterans and persons in need; Charitable services, namely, providing clothing, school uniforms, shoes, food and drink, school supplies, books, text books, gifts, art kits, healing kits, care packages, diapers to senior citizens, women, children, active duty soldiers, veterans and persons in need; and Charitable services, namely, organizing and conducting a volunteer outreach program providing fresh flowers to people to inspire acts of kindness

International Class(es): 035 - Primary Class

U.S Class(es):

100, 101, 102

Class Status:

ACTIVE

Basis:

1(a)

First Use: Feb. 2011

Use In Commerce:

Feb. 2011

## Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

---

### Current Owner(s) Information

---

**Owner Name:**  
KIND Management Inc.

**Owner Address:**  
1372 Broadway  
New York, NEW YORK 10018  
UNITED STATES

**Legal Entity Type:** CORPORATION

**State or Country Where Organized:**  
DELAWARE

---

### Attorney/Correspondence Information

---

**Attorney of Record**

**Attorney Name:** Margarita Wallach

**Attorney Primary Email Address:** [mwallach@mccarter.com](mailto:mwallach@mccarter.com)

**Attorney Email Authorized:**

Yes

**Correspondent**

**Correspondent Name/Address:**  
MARGARITA WALLACH  
McCarter & English LLP  
245 Park Ave Fl 27  
New York, NEW YORK 10167-2801  
UNITED STATES

**Phone:** 212-609-6800

**Fax:**

212-609-6921

**Correspondent e-mail:** [mwallach@mccarter.com](mailto:mwallach@mccarter.com) [dlynch@mccarter.com](mailto:dlynch@mccarter.com)

**Correspondent e-mail Authorized:**

Yes

---

**Domestic Representative - Not Found**

---

Generated on:

This page was generated by TSDR on 2016-01-15 14:55:40 EST

Mark: KIND

KIND

US Serial Number: 86724964

Application Filing Date:

Aug. 14, 2015

Filed as TEAS RF: Yes

Currently TEAS RF:

Yes

Register:

Principal

Mark Type:

Service Mark

Status:

Application has been published for opposition. The opposition period begins on the date of publication.

Status Date:

Nov. 24, 2015

Publication Date: Nov. 24, 2015

## Mark Information

Mark Literal Elements:

KIND

Standard Character Claim:

Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type:

4 - STANDARD CHARACTER MARK

## Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

For:

Online retail store services and mail order services featuring snack foods, snack-related gift sets and apparel

International Class(es): 035 - Primary Class

U.S. Class(es):

100, 101, 102

Class Status:

ACTIVE

Basis:

1(a)

First Use: Mar. 29, 2005

Use in Commerce:

Mar. 29, 2005

## Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

## Current Owner(s) Information

Owner Name:

KIND Management Inc.

Owner Address:

1372 Broadway  
New York, NEW YORK 10018  
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where  
Organized:

DELAWARE

---

### Attorney/Correspondence Information

---

#### Attorney of Record

Attorney Name: Margarita Wallach

Attorney Primary Email Address: [mwallach@mccarter.com](mailto:mwallach@mccarter.com)

Attorney Email  
Authorized:

Yes

#### Correspondent

Correspondent  
Name/Address:

MARGARITA WALLACH  
McCarter & English LLP  
245 Park Ave Fl 27  
New York, NEW YORK 10167-2801  
UNITED STATES

Phone: 212-609-6800

Fax:

212-609-6921

Correspondent e-mail: [mwallach@mccarter.com](mailto:mwallach@mccarter.com) [dlynch@mccarter.com](mailto:dlynch@mccarter.com)

Correspondent e-mail  
Authorized:

Yes

---

Domestic Representative - Not Found

---

Generated on:

This page was generated by TSDR on 2016-01-15 14:56:23 EST

Mark: KIND

KIND

US Serial Number: 86724943

Application Filing Date:

Aug. 14, 2015

Filed as TEAS RF: Yes

Currently TEAS RF:

Yes

Register:

Principal

Mark Type:

Service Mark

Status:

A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date:

Oct. 19, 2015

---

## Mark Information

---

Mark Literal Elements:

KIND

Standard Character Claim:

Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type:

4 - STANDARD CHARACTER MARK

---

## Goods and Services

---

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parentheses ((...)) identify any goods/services not claimed in a Section 15 affidavit of Incontestability; and
- Asterisks \*...\* identify additional (new) wording in the goods/services.

For:

Providing a website featuring blogs and non-downloadable publications in the nature of articles in the field of charitable giving and service; and education services

International Class(es): 041 - Primary Class

U.S Class(es):

100, 101, 107

Class Status:

ACTIVE

Basis:

1(a)

First Use: May 03, 2013

Use In Commerce:

May 03, 2013

---

## Basis Information (Case Level)

---

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

## Current Owner(s) Information

Owner Name:

KIND Management Inc.

Owner Address:

1372 Broadway  
New York, NEW YORK 10018  
UNITED STATES

Legal Entity Type: CORPORATION

State or Country Where  
Organized:

DELAWARE

## Attorney/Correspondence Information

Attorney of Record

Attorney Name: Margarita Wallach

Attorney Primary Email Address: [mwallach@mccarter.com](mailto:mwallach@mccarter.com)

Attorney Email  
Authorized:

Yes

Correspondent

Correspondent  
Name/Address:

MARGARITA WALLACH  
McCarter & English LLP  
245 Park Ave Fl 27  
New York, NEW YORK 10167-2801  
UNITED STATES

Phone: 212-609-6800

Fax:

212-609-6921

Correspondent e-mail: [mwallach@mccarter.com](mailto:mwallach@mccarter.com) [dlynch@mccarter.com](mailto:dlynch@mccarter.com)

Correspondent e-mail  
Authorized:

Yes

Domestic Representative - Not Found

**Generated on:**

This page was generated by TSDR on 2016-01-15 14:56:58 EST

Mark: KIND

KIND

US Serial Number: 86702578

Application Filing Date:

Jul. 23, 2015

Filed as TEAS RF: Yes

Currently TEAS RF:

Yes

Register:

Principal

Mark Type:

Trademark

Status:

A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date:

Oct. 19, 2015

---

## Mark Information

---

Mark Literal Elements:

KIND

Standard Character Claim:

Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type:

4 - STANDARD CHARACTER MARK

---

## Goods and Services

---

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [.] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks "\*" identify additional (new) wording in the goods/services.

For:

All-purpose carrying bags; carry-all bags; backpacks; reusable bags, tote bags and umbrellas

International Class(es): 018 - Primary Class

U.S Class(es):

001, 002, 003, 022, 041

Class Status:

ACTIVE

Basis:

1(a)

First Use: Apr. 2014

Use In Commerce:

Apr. 2014

---

## Basis Information (Case Level)

---

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No



## Current Owner(s) Information

**Owner Name:**

KIND Management Inc.

**Owner Address:**

1372 Broadway  
New York, NEW YORK UNITED STATES 10018

**Legal Entity Type:** CORPORATION

**State or Country Where  
Organized:**

DELAWARE

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** Margarita Wallach

**Docket Number:**

125929

**Attorney Primary Email  
Address:** [mwallach@mccarter.com](mailto:mwallach@mccarter.com)

**Attorney Email  
Authorized:**

Yes

### Correspondent

**Correspondent  
Name/Address:**

MARGARITA WALLACH  
McCarter & English LLP  
245 Park Ave Fl 27  
New York, NEW YORK UNITED STATES 10167-2801

**Phone:** (212) 609-6800

**Fax:**

(212) 609-6921

**Correspondent e-mail:** [mwallach@mccarter.com](mailto:mwallach@mccarter.com) [dlynch@mccarter.com](mailto:dlynch@mccarter.com)

**Correspondent e-mail  
Authorized:**

Yes

Domestic Representative - Not Found

**RED-LINED COPY  
OF PROPOSED  
AMENDED NOTICE  
OF OPPOSITION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application  
Serial No. 86/300,597  
Filed: June 4, 2014  
For the mark: **KINDHUB**  
Published: January 6, 2015

----- KIND Management Inc.,	:	OPPOSITION	NO.
	:	<u><del>91221839</del></u>	
	:		
Opposer,	:		
	:		
v.	:		
	:		
KINDHUB, LLC,	:		
	:		
Applicant.	:		
-----			

Commissioner for Trademarks  
United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

**AMENDED NOTICE OF OPPOSITION**

KIND Management Inc. (“Kind” or “Opposer”), a Delaware corporation having its principal place of business at 1372 Broadway, New York, New York 10018, as successor in interest to KIND Inc. and KIND LLC, will be damaged by registration of the mark KINDHUB (“Applicant’s Mark”) shown in Application Serial No. 86/300,597, filed by KINDHUB, LLC, a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 2136 Ford Parkway, No. 133, St. Paul, Minnesota 55116 (“Applicant”) based on an intent-to-use basis in connection with “dietary supplements drinks,

namely, protein drinks” in International Class 5; “a mobile software application providing a marketplace for sellers and buyers of goods and services and providing information in the field of health, wellness, fitness, and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, conserving plants, animals, water, and energy” in International Class 9; “cook books” in International Class 16; “imitation leather bags and wallets” in International Class 18; “shirts, pants, headwear, footwear, and imitation leather gloves” in International Class 25; “milk, meat” in International Class 29; “fruit and vegetable juices containing nutritional supplements” in International Class 32; “online retail and wholesale store services featuring environmentally responsible and sustainable products and food products; operating an online marketplace for sellers and buyers of goods and services; promoting public awareness of nutrition and healthy food options, reducing human impact on the environment, using sustainable products and sustainable business solutions, and conserving plants, animals, water, and energy; business consulting in the field of environmental management, namely advising businesses and individuals on issues of environmental impact, conservation, preservation, and protection, and economic analysis for business purposes in the nature of assisting companies to reduce impact on the environment and develop sustainable products, services, and business solutions” in International Class 35; “online journals, namely, blogs in the field of health, wellness, fitness and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, conserving plants, animals, water, and energy; arranging and conducting seminars in the field of health, wellness, fitness and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions and conserving plants, animals, water, and energy; educational and entertainment services, namely,

providing programs in the field of health, wellness, fitness and nutrition, reducing human impact on the environment, using and developing sustainable products, services, and sustainable business solutions, and conserving plants, animals, water, and energy; providing information in the field of fitness; consulting services in the field of fitness” in International Class 41 and “providing information in the field of health, wellness, nutrition, and identifying healthy food options; consulting services in the field of health, wellness, and nutrition” in International Class 44 (“Applicant’s Goods and Services”). Opposer will be damaged by the registration of Applicant’s Mark and opposes the foregoing application (the “Application”) on the following grounds:

1. On December 31, 2014, KIND LLC assigned all right, title and interest in and to those certain trademarks, trademark registrations and goodwill appurtenant thereto (“KIND Marks”) as set forth below in paragraph 6, including without limitation, the right to take proceedings against third parties to protect and/or defend the said KIND Marks, to KIND Inc.

2. On January 1, 2015, Opposer acquired by assignment from KIND Inc. all right, title and interest in and to the KIND Marks as set forth below in paragraph 6, including without limitation, the right to take proceedings against third parties to protect and/or defend the said KIND Marks.

3. Opposer, through its predecessors-in-interest, commenced use of the trademark KIND in connection with snack food bars at least as early as June 14, 2004. Since that time, Opposer, through its predecessors-in-interest, has continuously used the trademark KIND in commerce.


4. Opposer is the owner of the well-known trademark KIND as used in connection with apparel as well as the well-known mark KIND and other “KIND” formative trademarks as used in connection with snack food bars and other snack foods.

5. Opposer owns the trademark registration for KIND in association with “clothing and apparel, namely, T-shirts, sweatshirts, caps, vests, jackets” in Class 25 which was first used by Opposer on May 31, 2011 and first used in commerce on September 26, 2011.


6. Opposer owns the following trademarks (collectively the “KIND Marks”) [and applications](#) and registrations on the Principal Register in the United States Patent and Trademark Office (“USPTO”):

<b>Mark</b>	<b>Registration / Serial No.</b>	<b>Filing Date / Registration Date</b>	<b>Goods</b>
KIND	2,984,772	June 14, 2004 / August 16, 2005	“Ready to eat, cereal derived food bars containing nuts” in Class 30
KIND	3,971,639	November 20, 2007 / May 31, 2011	“Nutrition bars, namely, processed fruit-and-nut-based food bars, nut based snack food bars” in Class 29
KIND	4,161,495	November 20, 2007 / June 19, 2012	“Clothing and apparel, namely, T-shirts, sweatshirts, caps, vests, jackets” in Class 25  “Sweet snacks, namely, fruit based snack food, dried fruit mixes; snack mixes consisting primarily of processed fruits and

Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
			<p>processed nuts; nutrition bars, namely, nut and seed based snack bars; fruit based snack food bars also containing grains, cereals, dried fruit, fruit juice; nut based snack food” in Class 29</p> <p>“Snacks, namely, cereal based snack food; cereal based snack food bars, granola based snack food bars, grain based snack food; Snack foods, namely, granola based mixes, rice based snack food, whole grain based snack food” in Class 30</p>

Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
KIND	85/579,711	March 26, 2012	“Non-alcoholic beverages, namely, fruit juices, vegetable juices, fruit and vegetable juices, flavored water, sport drinks; bottled, carbonated and non carbonated water; non-alcoholic beverage mixes, specifically, powders and drink crystals for making vitamin enriched beverages excluding mixes for teas and not for medicinal purposes” in Class 32
	3,882,221	September 16, 2009 November 30, 2010	“Healthy snacks, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit” in Class 29



Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
	4,097,493	April 24, 2009 February 14, 2012	“Nutrition bars, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit” in Class 29
KINDINGS	4,013,148	January 2, 2010 August 16, 2011	“Healthy snacks, namely, nut and seed based snack bars; processed fruit and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit” in Class 29
KINDTASTIC	4,053,499	August 31, 2009 November 8, 2011	“Healthy snacks, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also containing nuts, grains, cereals and dried fruit” in Class 29
KINDELICIOUS	4,049,775	August 31, 2009 November 1, 2011	“Healthy snacks, namely, nut and seed based snack bars; processed fruit-and nut-based food bars, nut based snack food bars, fruit based snack food bars also

Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
			containing nuts, grains, cereals and dried fruit” in Class 29
<a href="#">KIND</a>	<a href="#">86/724,974</a>	<a href="#">August 14, 2015</a>	<a href="#">“Promoting the charitable giving of others, namely, tracking and publicizing charitable donations and random acts of kindness;</a> <a href="#">Promotional services, namely, promoting the charities of others; Charitable services, namely, making monetary grants to individuals and groups who provide acts of kindness, services and activities for persons in need;</a> <a href="#">Charitable services, namely, organizing and conducting volunteer programs and community service projects;</a> <a href="#">Charitable services, namely, promoting public awareness and education of world hunger, human rights, environment, exploitation of women, children and men, homelessness, major health challenges, education, social justice and poverty;</a> <a href="#">Charitable services,</a>

Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
			<u>namely, organizing and developing programs and events that aim to improve and clean up the environment;</u> <u>Charitable services, namely, organizing and developing programs and events that aim to improve schools;</u> <u>Charitable services, namely, organizing and developing programs and events that aim to improve the lives of senior citizens, women, children, active duty soldiers, veterans and persons in need;</u> <u>Charitable services, namely, providing clothing, school uniforms, shoes, food and drink, school supplies, books, text books, gifts, art kits, healing kits, care packages, diapers to senior citizens, women, children, active duty soldiers, veterans and persons in need; and</u> <u>Charitable services, namely, organizing and conducting a volunteer outreach program providing fresh flowers to people to inspire acts of kindness” in Class</u>

Mark	Registration / Serial No.	Filing Date / Registration Date	Goods
			<u>35</u>
<u>KIND</u>	<u>86/724,964</u>	<u>August 14, 2015</u>	<u>“Online retail store services and mail order services featuring snack foods, snack-related gift sets and apparel” in Class 35</u>
<u>KIND</u>	<u>86/724,943</u>	<u>August 14, 2015</u>	<u>“Providing a website featuring blogs and non-downloadable publications in the nature of articles in the field of charitable giving and service; and education services” in Class 41</u>
<u>KIND</u>	<u>86/702,578</u>	<u>Jul. 23, 2015</u>	<u>“All-purpose carrying bags; carry-all bags; backpacks; reusable bags, tote bags and umbrellas” in Class 18</u>

Copies of the registration certificates printed from the USPTO website for the above referenced ~~trademarks~~trademark registrations and the Trademark Status & Document Retrieval (TSDR) documents printed from the USPTO website for the above referenced trademark applications are attached as Exhibit A.

7. Opposer has never abandoned and has, through its predecessors-in-interest, continuously used the KIND Marks in connection with the foregoing goods.

8. The registrations referenced above are valid and subsisting, in full force and effect. Opposer’s Registration No. 2,984,772 for the trademark KIND is incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and all of the registrations

referenced above constitute conclusive evidence of Opposer's exclusive right to use the KIND Marks in commerce in connection with the goods specified in the registrations.

9. Since at least as early as March 29, 2005 Opposer has been continuously selling on-line snack bars under the trademark KIND and has continuously sold online since at least as early as 2011 apparel under the trademark KIND.

10. Since at least as early as February 2011, Opposer has continuously provided charitable services under the trademark KIND.

11. Since at least as early as May 3, 2013, Opposer has continuously provided a blog under the trademark KIND.

12. Since at least as early as April 2014, Opposer has been continuously using the mark KIND in connection with bags, including reusable bags, backpacks and umbrellas.

13. ~~10.~~ Opposer is the owner of the trade name KIND which it, through its predecessors-in-interest, has continuously used since a date prior to any date of priority that may be asserted by Applicant.

14. ~~11.~~ During its longstanding, widespread and continuous use of the KIND Marks and the trade name KIND, Opposer has expended considerable time, effort and financial resources in advertising and publicizing the sale of the goods bearing the KIND Marks and sold under the trade name KIND. The KIND Marks and the KIND trade name are symbolic of the extensive goodwill and consumer recognition that Opposer has established through substantial and extensive expenditures of time, effort and other resources in connection with promotion and advertising of the goods Opposer offers and sells under the KIND Marks and the KIND trade name. As a result of the foregoing and the high quality of Opposer's apparel and snack products

the public and the trade have come to recognize the products offered in conjunction with the KIND Marks and the trade name KIND as signifying Opposer and its apparel and snack foods.

15. ~~12.~~ Upon information and belief, Applicant is a limited liability company organized and existing under the laws of the State of Delaware with a principal place of business located at 2136 Ford Parkway, No. 133, St. Paul, Minnesota 55116.

16. ~~13.~~ On June 4, 2014 Applicant filed the Application based on an intent-to-use for the trademark KINDHUB in commerce in connection with Applicant's Goods and Services. Accordingly, the KIND Marks cited above, and the trade name KIND, have priority of use and/or registration to Applicant's use of and application for Applicant's Mark.

17. ~~14.~~ The Application was published for opposition on January 6, 2015. An extension of the deadline for opposing the Application was timely filed. The current deadline to oppose the Application is May 6, 2015.

18. ~~15.~~ The trademark proposed for registration by the Applicant, namely, KINDHUB, is identical to and/or confusingly similar to the KIND Marks and Opposer's trade name KIND, and is applied to goods and services that are identical and/or closely related to the goods and services offered and sold by Opposer under the KIND Marks and the KIND trade name. Applicant's Mark also deceptively points to the Opposer. Applicant's Mark so closely resembles Opposer's KIND Marks and KIND trade name as to be likely to be confused therewith and mistaken therefor. Applicant's Mark is deceptively similar to Opposer's KIND Marks and KIND trade name so as to cause confusion and lead to deception as to the origin of Applicant's Goods and Services bearing the Applicant's Mark.

19. ~~16.~~ Upon information and belief, Applicant's Goods and Services bearing Applicant's Mark will be promoted and sold or offered for sale through the same distribution channels and to the same classes of consumers as those of Opposer.

20. ~~17.~~ If Applicant is permitted to use and register its trademark KINDHUB for Applicant's Goods and Services as specified in its Application, there will be confusion in the trade. As a result, the Opposer will be injured and damaged by reason of the similarity between the Applicant's mark KINDHUB and Opposer's KIND Marks and KIND trade name. Consumers will associate Applicant's Goods and Services with those of the Opposer, and mistakenly believe that such goods and services are provided, endorsed by, or otherwise affiliated with the Opposer.

### **COUNT ONE**

#### **Likelihood of Confusion**

21. ~~18.~~ Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through ~~17~~20.

22. ~~19.~~ Based on the similarities between Opposer's KIND Marks and KIND trade name and Applicant's Mark, and the similarity and related nature of the goods and services of the respective parties, Applicant's Mark so resembles Opposer's KIND Marks and KIND trade name, which were previously and continuously used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive consumers, with consequent injury to Opposer and to the public in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

23. ~~20.~~ The public is likely to falsely associate Applicant's Goods and Services under the KINDHUB mark with Opposer or with Opposer's goods and services, falsely believe that

Applicant's Goods and Services emanate from or are sponsored, endorsed or licensed by Opposer, or falsely believe that there is some relationship between Applicant and Opposer.

24. ~~21.~~ The granting of a trademark registration for the trademark KINDHUB to Applicant would be contrary to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and would violate or diminish the prior and superior rights of Opposer in its KIND Marks and KIND trade name.

25. ~~22.~~ Applicant's Application and the presumption of exclusivity that would arise from a registration to Applicant of the trademark KINDHUB are inconsistent with Opposer's prior rights in the KIND Marks and KIND trade name and the rights flowing from Opposer's federal trademark registrations for the KIND Marks.

26. ~~23.~~ Opposer will be damaged by the registration sought by Applicant because such registration will support and assist Applicant in the confusing and misleading use of the Applicant's Mark and will give color of exclusive statutory rights to Applicant in violation and derogation of the prior and superior rights of Opposer.

## **COUNT TWO**

### **Falsely Suggests a Connection with Opposer**

27. ~~24.~~ Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through ~~23~~26.

28. ~~25.~~ Opposer will be damaged by registration of Applicant's Mark under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that Applicant's use and registration of the subject mark will falsely suggest a connection between Applicant and Opposer to the damage of Opposer and injury to the public, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. 1052(a).



### **COUNT THREE**

#### **Dilution**

29. ~~26.~~ Opposer repeats and realleges each and every allegation set forth in paragraphs 1 through ~~25~~28.

30. ~~27.~~ In view of the strength of Opposer's KIND Marks, the duration and extent of Opposer's use and advertising of its KIND Marks, the nationwide use of Opposer's KIND Marks, and the degree of recognition of Opposer's KIND Marks, Opposer's KIND Marks have become famous. Opposer's KIND Marks were famous prior to the filing date of the Application for Applicant's Mark.

31. ~~28.~~ Applicant's Mark is likely to cause, and will cause, dilution of the distinctive value of Opposer's KIND Marks under Section 43(c) of the Lanham Act of 1946, as amended, 15 U.S.C. § 1125(c).

32. ~~29.~~ Opposer will be damaged if Applicant's Mark is granted registration because Applicant will obtain statutory rights in the designation KINDHUB in violation and derogation of the established prior rights of Opposer.

WHEREFORE, Opposer respectfully requests that said Application Serial No. 86/300,597 be rejected, that no registration be issued thereon to Applicant, that this Opposition be sustained in favor of Opposer and that the Trademark Trial and Appeal Board grant such other and further relief as it deems just and appropriate.

Payment has been provided in the requisite amount to cover the statutory filing fee for filing a Notice of Opposition. All communications should be addressed to Opposer's counsel, McCarter & English at the address stated below.

Dated: ~~May 6~~January 15, 20152016

Respectfully submitted,

McCarter & English, LLP

By: /Margarita Wallach/  
Margarita Wallach  
Gary H. Fechter  
Lori J. Shyavitz  
Alice M. Pang  
Attorneys for Opposer  
KIND Management Inc.  
245 Park Ave, 27<sup>th</sup> Floor  
New York, NY 10167  
Tel: (212) 609-6800  
Fax: (212) 609-6921

CERTIFICATION OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing AMENDED NOTICE OF OPPOSITION ~~against Trademark Application Serial No. 86/300,597~~ ~~for the trademark KINDHUB~~ has been served on counsel for Applicant by mailing said copy on January 15, 2016, via First Class Mail ~~at the following address,~~ postage prepaid to:

Joel D. Leviton  
Stinson Leonard Street LLP  
150 5<sup>th</sup> Street, Ste. 2300  
Minneapolis, Minnesota 55402

~~Dated: May \_\_, 2015~~

/Lori J. Shyavitz/

~~Danielle Lynch~~ Lori J. Shyavitz